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FIRST GENERAL COUNSEL'S REPORT CELA

MUR: 6753

DATE COMPLAINT FILED: August 29, 2013

DATE OF NOTIFICATION: September 3, 2013

RESPONSE RECEIVED: October 21, 2013

October 28, 2013

DATE OF ACTIVATION: December 3, 2013

ELECTION CYCLE: 2014

EXPIRATION OF SOL: January 17, 2018

COMPLAINANT:

Christy L. French

RESPONDENTS:

Representative Stevan E. Pearce

People for Pearce and James Francis
in his official capacity as treasurer

GOAL WestPAC and Philip G. Pearce
in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 441a(a)(1)

2 U.S.C. § 441a(f)

2 U.S.C. § 441i(e)(1)(A)

11 C.F.R. § 300.2(c)(2)

11 C.F.R. § 300.61

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter involves allegations that Representative Stevan E. Pearce of New Mexico's Second Congressional District and his principal campaign committee, People for Pearce and James Francis in his official capacity as treasurer (the "Committee"), violated the Federal Election Campaign Act of 1971, as amended (the "Act") when they directly or indirectly

1 "established, financed, maintained or controlled" WestPAC, an independent-expenditure-only
2 political committee,¹ which allegedly raised and spent money obtained outside federal limitations
3 and source prohibitions. In support of that claim, the Complaint contends that the Committee
4 contributed a substantial proportion of WestPAC's initial funds when it was founded and that
5 WestPAC and the Committee shared certain present or former personnel.

6 The record reflects that the Committee made a \$10,000 contribution to WestPAC within
7 weeks of its founding, which constituted two-thirds of WestPAC's receipts for the first six
8 months of its existence. Further, WestPAC employed one current and one former Committee
9 employee. But no other factor identified in the relevant Commission regulations suggests that,
10 "in the context of the overall relationship" between the parties, Rep. Pearce or the Committee
11 established, financed, maintained, or controlled WestPAC.² Given the modest affirmative
12 indication of such a relationship, the low amount at issue, and the facts that WestPAC refunded
13 the contribution to the Committee before receiving notice of the Complaint and never engaged in
14 any substantive activity before doing so, we recommend that the Commission dismiss the
15 Complaint in the exercise of its prosecutorial discretion.³

16 II. FACTS

17 Representative Stevan E. Pearce is a member of the U.S. House of Representatives from
18 New Mexico's Second Congressional District and was a candidate for reelection in 2013.

¹ As used in this Report, "WestPAC" refers to Respondent GOAL WestPAC and Philip G. Pearce in his official capacity as Treasurer, collectively.

² See 11 C.F.R. § 300.2(c)(2).

³ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

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1 Representative Pearce's brother, Philip G. Pearce, serves as a bookkeeper for the Committee.⁴

2 Dan Hazelwood served as a general consultant to the Committee.⁵

3 Jason Heffley founded WestPAC on January 9, 2013.⁶ On January 28, 2013, WestPAC
4 filed its Statement of Organization with the Commission identifying itself as an independent
5 expenditure-only political committee.⁷ Heffley previously served as Pearce's deputy chief of
6 staff and campaign manager.⁸ Philip Pearce, the Committee's bookkeeper and Rep. Pearce's
7 brother, currently serves as WestPAC's Treasurer.⁹

8 The Complaint alleges that, while a candidate for reelection, Rep. Pearce caused the
9 Committee to contribute \$10,000 to WestPAC in January 2013.¹⁰ It notes that these funds
10 constituted two-thirds of the \$15,000 that WestPAC received during its first six months,
11 suggesting that Heffley used the Committee's contribution to establish and finance WestPAC
12 during its first months of operation.¹¹ The Complaint alleges that Heffley and Philip Pearce both
13 held positions with the Committee and WestPAC and that the Committee and WestPAC share
14 adjacent post office boxes in Hobbs, New Mexico.¹² The Complaint therefore concludes that
15 Pearce and the Committee may have violated the Act's proscription of federal candidates and

⁴ Committee Resp. at 2 (Oct. 25, 2013).

⁵ *Id.*

⁶ *Id.* (Heffley founded WestPAC); WestPAC Resp. at 2 (Oct. 18, 2013) (WestPAC was established on January 9, 2013).

⁷ WestPAC Statement of Organization (Jan. 28, 2013).

⁸ WestPAC Resp. at 4.

⁹ *Id.*; see WestPAC Statement of Org.

¹⁰ Compl. at 2-3 (Aug. 29, 2013).

¹¹ *Id.*

¹² *Id.* at 2.

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1 their committees receiving, directing, or spending funds that are not subject to the contribution
2 limits and source prohibitions of the Act in connection with a federal election.¹³

3 The Responses reject that contention. According to the Committee, in early January
4 2013, Jason Heffley informed the Committee that he was creating WestPAC and solicited a
5 \$10,000 contribution.¹⁴ For its part, WestPAC claims that, before it solicited the Committee, it
6 had received commitments from members of its Board of Directors and Advisory Board to
7 contribute in excess of \$100,000 and had proposed a budget in excess of \$1 million.¹⁵ As such,
8 Respondents assert that they did not believe that the Committee's \$10,000 contribution would
9 serve as "seed money" or even a significant portion of WestPAC's overall receipts.¹⁶ Despite
10 those expectations, WestPAC did not receive any additional initial funding from its Board
11 members.¹⁷ Nonetheless, Respondents further argue that WestPAC refunded the Committee's
12 contribution on September 2, 2013, and that WestPAC's only disbursements before doing so
13 involved payments for accounting and legal services.¹⁸

¹³ *Id.* at 4-5; *see* 2 U.S.C. § 441i(e)(1); 11 C.F.R. § 300.61.

¹⁴ Committee Resp. at 2-3; Aff. of Dan N. Hazelwood ¶ 6 (Oct. 25, 2013) (attachment to Committee Response).

¹⁵ WestPAC Resp. 2-3; Committee Resp. at 2-3.

¹⁶ *Id.*; Committee Resp. 2-3. For example, the Committee's general consultant provided a sworn affidavit relating in part that, when the Committee made its contribution, he "was unaware, and had no reason to believe, that the contribution would be the first contribution received by GOAL WestPAC. Upon reviewing my records, I specifically recollect being told that Jason Heffley indicated that the PAC received early pledges equaling \$100,000, to be collected within a short amount of time. I was under the belief that 'short amount of time' meant the pledges would be collected within weeks." Hazelwood Aff. ¶ 8.

¹⁷ WestPAC Resp. at 3; Committee Resp. at 2-3.

¹⁸ *Id.* In its 2013 Mid-Year Report, WestPAC reported that it received \$10,000 from the Committee on January 17, 2013, and a \$5,000 contribution from another entity on February 28, 2013. WestPAC 2013 Mid-Year Report at 6-7 (July 15, 2013). During this period, WestPAC reported disbursements of \$1,614.76 to File Right for accounting services and \$2,604.62 to Gober Hilgers PLLC and \$10,000 to Jason Heffley for legal consulting services. *Id.* In its 2013 Year-End Report, WestPAC reported an additional \$55,944.12 in contributions from other

1 **III. ANALYSIS**

2 The Act provides that an entity "directly or indirectly established, financed, maintained or
3 controlled" by a federal candidate or officeholder may not "solicit, receive, direct, transfer, or
4 spend funds in connection with an election for Federal office" or "any election other than an
5 election for Federal office," unless those funds comply with the Act's contribution limitations
6 and source prohibitions.¹⁹ In the event a candidate or officeholder establishes, finances,
7 maintains, or controls such an entity, the Committee must report any expenditures of that the
8 entity makes on behalf of the Committee as in-kind contributions, and any such in-kind
9 contribution must not exceed the applicable contribution limits under 2 U.S.C. § 441a(a)(1)(A).²⁰
10 Likewise, because WestPAC received at least one corporate contribution from ME-TEX Oil &
11 Gas, Inc., the Committee's receipt of an in-kind contribution from WestPAC would violate
12 2 U.S.C. § 441i(e)(1)(B)(ii).

13 The Commission's implementing regulations identify ten non-exhaustive factors for
14 assessing whether a federal candidate or officeholder directly or indirectly "established,
15 financed, maintained or controlled" an entity under Section 441i(e).²¹ Among other factors, the
16 Commission will consider whether the candidate or officeholder shared common officers or
17 employees with the entity, provided funds in a significant amount or on an ongoing basis to the

individuals, corporations, and political action committees, as well as its refund of the \$10,000 contribution from the Committee on September 2, 2013. WestPAC 2013 Year-End Report at 3,15 (Jan. 29, 2014).

¹⁹ 2 U.S.C. § 441i(e)(1).

²⁰ 2 U.S.C. §§ 434(b); 441a(f).

²¹ See 11 C.F.R. § 300.2(c).

1 entity, or engaged in an active or significant role in the formation of the entity.²² Ultimately, the
2 inquiry focuses on "the context of the overall relationship" between the alleged sponsor and the
3 entity, such that the presence of any one or more factors alone may not bring a particular
4 relationship within the prohibition.²³

5 Here, the Complaint asserts that the Committee provided a substantial amount of
6 WestPAC's reported start-up capital and shared certain current and former officers and
7 employees with WestPAC. We address each of those factors in turn below.

8 **A. The Committee's Initial \$10,000 Contribution**

9 The Complaint alleges that the initial \$10,000 contribution of the Committee essentially
10 financed the establishment of WestPAC because it constituted WestPAC's initial seed money
11 and two-thirds of its receipts during the first six months of its operations.²⁴ As noted, the
12 Committee contributed \$10,000 of the \$15,000 in total receipts that WestPAC has reported to the
13 Commission for the period January 1, 2013 to June 30, 2013.

14 Given the significant proportion of its funding that came from the Committee, it appears
15 that the Committee's contribution may have helped establish, finance, or maintain WestPAC
16 during its first months of operation. Nonetheless, several other facts diminish the significance of
17 that initial contribution "in the context of the overall relationship" between the parties. First, that
18 contribution was the Committee's only such contribution to WestPAC; that is, it did not provide
19 funds on an ongoing basis or in a manner that might suggest a continuing relationship between
20 the committees. Second, Pearce and the Committee represent that they were unaware that their

²² See *id.* § 300.2(c)(2)(v), (vii), (viii), (ix); Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 72 Fed. Reg. 49,064, 49,121 (July 29, 2002).

²³ See 11 C.F.R. § 300.2(c)(2).

²⁴ Compl. at 2-3.

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1 funds would constitute a significant portion of WestPAC's receipts and have submitted the
2 sworn affidavit of the Committee's consultant in support of that claim.²⁵ Third, although it is
3 true that the contribution constituted a substantial part of WestPAC's available operational
4 budget during the first half of 2013, the funds were not used in any way that benefitted Pearce or
5 the Committee; to the contrary, the Committee's funds were used to pay legal and accounting
6 expenses of WestPAC, which are the only disbursements WestPAC made prior to refunding the
7 Committee's contribution on September 2, 2013.²⁶

8 **B. Shared Officers and Employees**

9 The Respondents concede that Philip Pearce, the candidate's brother and the Committee's
10 bookkeeper, is also WestPAC's Treasurer and that Jason Heffley, who formed WestPAC and sits
11 on its Board, previously served as deputy chief of staff and campaign manager for the
12 Committee. Nonetheless, the Respondents assert that this overlap in personnel does not indicate
13 a "formal or ongoing relationship" of the sort that the Commission's regulation suggests may
14 serve as evidence of a covered relationship under Section 441i(e).²⁷

15 As to Philip Pearce, the Committee explains that his "position and job description with
16 People for Pearce is ministerial and limited to maintaining financial records, and does not
17 involve making decisions pertaining to the committee's strategy, fundraising or

²⁵ Committee Resp. at 2-3; WestPAC Resp. at 2-3. Additionally, all Respondents represent that Pearce and the Committee have had no further involvement with WestPAC. See Committee Resp. at 3; WestPAC Resp. at 5.

²⁶ WestPAC's disclosure reports shows a variety of non-administrative disbursements were made after the refund of the Committee's \$10,000 contribution on September 2, 2013, including disbursements for advertising. The only advertising disbursements that were specifically identified as having being associated with a particular race were disbursements to support a local mayoral candidate. WestPAC 2013 Year-End Report at 11-17 (Jan. 29, 2014).

²⁷ Committee Resp. at 4; see 11 C.F.R. § 300.2(c)(iv)-(vi).

1 communications.”²⁸ WestPAC claims that he “was hired to provide FEC reporting and
2 accounting services for WestPAC and does not serve on [WestPAC’s] Board of Directors or
3 Advisory Board, does not have the authority to participate in the governance of WestPAC, and
4 does not have the ability to hire and fire employees of [WestPAC].”²⁹

5 Concerning Heffley, Respondents deny that Pearce or the Committee played any role in
6 creating, forming, or organizing WestPAC, asserting that Heffley developed it without the
7 involvement of Pearce and the Committee.³⁰ The Committee further represents that Heffley’s
8 only communications with the Committee beyond his initial solicitation of a contribution was a
9 single, subsequent “phone call upon learning of the complaint in this Matter Under Review.”³¹

10 Given those representations, which we have no basis to discredit, the overlap in personnel
11 among the two committees, although not immaterial, appears insufficient in the context of the
12 overall relationship to conclude that Pearce or the Committee “established, financed, maintained,
13 or controlled” WestPAC as alleged. The Regulation’s treatment of shared staff focuses on
14 whether the overlap suggests a “formal or ongoing relationship” between the sponsor and
15 entity.³² Here, the founder of WestPAC is not a current employee of the Committee, and his sole
16 substantive contact with the Committee involved an initial solicitation for a contribution that

²⁸ Committee Resp. at 4.

²⁹ WestPAC Resp. at 4-5.

³⁰ Committee Resp. at 4; WestPAC Resp. at 2-3.

³¹ Hazelwood Aff. ¶ 8; Committee Resp. at 4.

³² See First Gen. Counsel’s Rpt at 13-14, MUR 5943 (Giuliani) (a shared donor and a common former staff member alone provide insufficient basis to conclude a candidate’s committee established, financed, maintained or controlled another entity under § 441i(e)).

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1 or the Committee exercised direct or indirect control over WestPAC's activities generally or over
2 its funding and spending decisions in particular.

3 **D. Conclusion**

4 In sum, some of the factors described in the Commission's implementing regulations
5 concerning Section 441i(e) are present here: the Committee made a contribution at the outset of
6 WestPAC's existence that constituted a significant portion of its receipts for its first six months
7 of operation,³⁷ and the two entities engaged two people in common — one a former employee of
8 the candidate and the other a current employee. Nonetheless, the lack of any other factor
9 suggesting that Pearce established, maintained, financed, or controlled GOAL WestPAC and the
10 modest amount and scope of activity at issue — a \$10,000 contribution that ultimately was
11 refunded and WestPAC's failure to disburse any funds on substantive, non-administrative
12 expenses before refunding it — together suggest that additional enforcement proceedings would
13 not be warranted here. Accordingly, we recommend that the Commission exercise its
14 prosecutorial discretion to dismiss the allegation that Rep. Stevan Pearce, People for Pearce and
15 James Francis in his official capacity as treasurer, and GOAL WestPAC and Philip G. Pearce in
16 his official capacity as treasurer, violated 2 U.S.C §§ 441a(a)(1), 441a(f), and 441i(e) and 11
17 C.F.R § 300.2(c)(2).³⁸

³⁷ See, e.g., First Gen. Counsel's Rpt. at 9-12, MUR 6753 (Issa) (finding reason to believe that congressman established, financed, maintained or controlled entity when he provided sixty percent of its total funds and all of its "seed money").

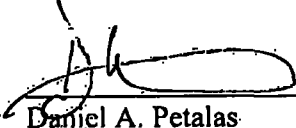
³⁸ See *Heckler*, 470 U.S. at 821; Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) (recognizing that, in the exercise of its prosecutorial discretion, "the Commission will dismiss a matter when the matter does not merit further use of Commission resources, due to factors such as the small amount or significance of the alleged violation [or] the vagueness or weakness of the evidence," among other reasons).

IV. RECOMMENDATIONS


- (1) Dismiss allegations that Rep. Stevan Pearce, People for Pearce and James Francis in his official capacity as treasurer violated 2 U.S.C. § 441i(e) by establishing, financing, maintaining, or controlling a committee that did not comply with the Act's contribution limitations and source prohibitions.
- (2) Dismiss allegations that GOAL WestPAC and Philip G. Pearce in his official capacity as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) by making excessive in-kind contributions.
- (3) Dismiss allegations that Rep. Stevan Pearce, People for Pearce and James Francis in his official capacity as treasurer violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions.
- (4) Approve the attached Factual and Legal Analysis.
- (5) Approve the appropriate letters; and
- (6) Close the file.

Date

6/19/14


Daniel A. Petalas
Associate General Counsel
For Enforcement


Mark Shonkwiler
Assistant General Counsel


Camilla Jackson Jones
Attorney